



DEPARTMENT OF HOMELAND SECURITY

PROCEDURES TO FACILITATE THE

PROVISION OF

REASONABLE ACCOMMODATION

Office for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

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Purpose

The following implements Executive Order 13164 by establishing requirements for processing requests for reasonable accommodation and, where appropriate, for providing reasonable accommodation to employees and applicants with disabilities.

Authority

The Rehabilitation Act of 1973 (29 U.S.C 701), as amended, requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship.

Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000), requires that Federal agencies establish effective written procedures for processing requests for reasonable accommodation.

Equal Employment Opportunity Commission Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915-003 (October 20, 2000), explains EO 13164 in detail.

Equal Employment Opportunity Enforcement Revised Guidance on Reasonable Accommodation and Undue Hardship under the American's with Disabilities Act (October 17, 2002) clarifies and updates the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.

Policy

The Department of Homeland Security (DHS) is committed to providing reasonable accommodation to employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity (EEO).

DHS shall provide reasonable accommodation for the known physical or mental limitations of qualified employees and applicants with disabilities, unless DHS can demonstrate that a particular accommodation would impose an undue hardship on the operation of its programs.

Scope

The policies and procedures contained herein apply to all DHS organizational elements and to all employees and applicants for employment with the Department and its organizational elements and offices. These policies and procedures supplement the Equal Employment Opportunity Commission (EEOC) Revised Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (October 17, 2002), and EEOC Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000). Both documents are available on EEOC's internet site at www.eeoc.gov.

Background

The Rehabilitation Act of 1973 (29 U.S.C 701), as amended, was the first national law to address employment protection for individuals with disabilities. In part, the Act required an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship.

The EEOC issued enforcement guidance on March 1, 1999, which clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship. EEOC issued revised enforcement guidance on October 17, 2002.

On July 26, 2000, Executive Order (EO) 13164 was signed. The EO required that Federal agencies establish effective written procedures for processing requests for reasonable accommodation. The EO did not create any new enforceable rights for Executive branch employees or applicants for employment.

On October 20, 2000, EEOC issued policy guidance that further explains the effects of the EO 13164.

Definitions

Decision-maker. An individual who has authority to determine whether a requested accommodation will be provided.

Department. Department of Homeland Security, including its subordinate organizational elements and offices.

Disability. An impairment that substantially limits one or more of the major life activities.

Dispute Resolution Process. Any voluntary mechanism through which an individual can request reconsideration of denial of reasonable accommodation, regardless of whether the person has started the EEO complaint process.

Essential Function. Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform them. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

Extenuating Circumstances. Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. Limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, processing a request for reasonable accommodation or providing an accommodation may not be delayed because a particular staff member is unavailable.

Individual with a Disability. A person who has a physical or mental impairment that substantially limits one or more of that person's major life activities, has a record of impairment, or is regarded as having such an impairment.

Interactive Process. The process by which the individual requesting an accommodation and the Decision-maker talk to each other about the request for accommodation, the process for determining whether an accommodation will be provided, and potential accommodations.

Major Life Activity. Basic activities that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Organizational Element. Any bureau, office, service or other component of the DHS.

Qualified Individual with a Disability. An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Reasonable Accommodation. An adjustment or alteration that enables a qualified person with a disability to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodations:

- modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille);
- modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job (such as providing sign language interpreters); and
- modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as removing physical barriers in an organization's criteria).

Reassignment. A form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the job and will not have to compete.

Receiving Officials. The officials designated to officially receive a request for reasonable accommodation from an employee or applicant (or an individual acting on his/her behalf), determine who will handle the request (the Decision-maker), and monitor the request until it is closed out. Typically this is the employee's immediate supervisor; another supervisor or manager in the employee's immediate chain of command; the Equal Employment Opportunity (EEO) office; any other office designated to oversee the reasonable accommodation process; in connection with the application process, any agency employee with whom the applicant has contact in connection with the application process; or any other individual designated by the organizational element.

Request for Reasonable Accommodation. A statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition.

Requester. A qualified employee or applicant with a disability, or an individual acting on his/her behalf, who requests reasonable accommodation.

Undue Hardship. An action requiring significant difficulty or expense when considered in light of factors such as the agency's size, financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

Requesting Reasonable Accommodation

The Request

- a. **The reasonable accommodation process begins** as soon as the request for accommodation is made either orally or in writing. (A sample request form is provided in Appendix A.) The request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. **The request does not necessarily mean that the employer is required to provide the change.**
- b. **The individual's request must be considered** if it is made to his/her supervisor; another supervisor or manager in his/her immediate chain of command; the Equal Employment Opportunity (EEO) office; any other office designated to oversee the reasonable accommodation process; in connection with the application process, any agency employee with whom the applicant has contact in connection with the application process; or any other individual designated by the organizational element.
- c. **A family member, friend, health professional, or other representative may request a reasonable accommodation** on behalf of an employee or applicant with a disability. The request shall be made to one of the same persons to whom the employee or applicant would make the request. To the extent possible, an individual with a disability should be contacted to confirm that he/she in fact wants a reasonable accommodation. The individual may refuse to accept an accommodation that is not needed.

Written Confirmations

- a. To ensure accurate records regarding requests for accommodation, **employees must follow up an oral request for accommodation with a written confirmation** in a format determined appropriate by the organizational element. Receiving Officials must forward requests for reasonable accommodations to the appropriate revision maker as soon as possible, but not more than 5 days upon receipt. While the written confirmation should be made as soon as possible following the request, it is not a requirement for the request itself. However, processing of the request will begin as soon as it is made, whether or not the confirmation has been provided. A sample written confirmation is provided as Appendix B. Organizational element plans may also provide that confirmations can be

made by fax or e-mail.

- b. **A written confirmation is not required** when an individual needs a reasonable accommodation on a recurring basis (e.g., the assistance of sign language interpreters or readers). The written form is required only for the first request although appropriate notice must be given each time the accommodation is needed.

The Interactive Process

Communication is a priority throughout the entire process. Organizational element officials involved in the provision of reasonable accommodation should take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate, to the extent possible, in helping to identify an effective accommodation. Resources, which are available to help both the Decision-maker and the individual requesting the accommodation to identify possible accommodations, are listed in Appendix C. The Department and organizational element Disability Program Managers are also available to provide assistance.

On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the Decision-maker and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.

Determining Who Will Handle the Request

- a. **Receiving Officials.** Organizational element officials must be designated to receive the request, determine who will be responsible for handling the request (the Decision-maker), forward the request to the Decision-maker, and monitor the request through closure. Typically this is the employee's immediate supervisor; another supervisor or manager in his/her immediate chain of command; the Equal Employment Opportunity (EEO) office; any other office designated to oversee the reasonable accommodation process; in connection with the application process, any agency employee with whom the applicant has contact in connection with the application process; or any other

individual designated by the organizational element.

Decision-makers. Each organizational element shall designate those officials delegated principal responsibility for identifying possible accommodations and for determining whether an accommodation will be provided. The Decision-maker may differ depending on whether the request is initiated by an employee or an applicant, or the type of accommodation being requested. For example, the Decision-maker could be as follows:

- (1) the organizational element Human Resource Specialist responsible for the recruitment and/or selection process if the request for accommodation is from an applicant;
 - (2) the organizational element Disability Program Manager if the accommodation requested is for adaptive equipment, a reader or sign language interpreter, removal of an architectural barrier, accessible parking, or materials in alternative formats;
 - (3) the head of the office or his/her designee where the accommodation requested involves personnel actions; or
 - (4) if the requests are from an employee, the Decision-maker might be the employee's immediate supervisor or the head of the office.
- c. **Back-Up.** Organizational elements shall ensure that procedures are in place to provide back-up coverage to continue receiving, processing, and providing reasonable accommodations when the Receiving Official and Decision-makers are unavailable. The time frames discussed in paragraph VII, of this section will not be suspended or extended because of the unavailability of the Receiving or Decision-maker.
- d. **Organizational Element Disability Program Manager.** The Disability Program Manager shall be available, as needed, to provide assistance to employees, human resources officials and Decision-makers in processing requests for reasonable accommodation.

V. **Reassignment as an Accommodation**

Reassignment will only be considered as a reasonable accommodation if a determination is made that no other reasonable accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.

In considering whether there are positions available for reassignment, the Decision-maker should work with the organizational element's Disability Program Manager and Human Resources Office staff, as well as with the individual requesting the accommodation to identify:

- (1) all vacant positions within the organizational element for which the employee may be qualified, with or without reasonable accommodation; and
- (2) all positions which the organizational element's Human Resources Office have reason to believe will become vacant over the next **60 business days** and for which the employee may be qualified.

The organizational element will first focus on positions, which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, the organizational element will consider vacant lower level positions for which the individual is qualified.

Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the organizational element shall not pay for the employee's relocation costs unless organizational element policy provides for such payments for non-disabled employees.

Reassignment as a form of reasonable accommodation can only be offered to DHS employees and is not available as an accommodation for job applicants.

VI. Requests For Medical Information

- a. The Department, its organizational elements and offices are entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. In some cases the disability and need for accommodation will be obvious or otherwise already known to the Decision-maker. In these cases, further medical information will not be sought. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the Decision-maker, the Department or organizational element may require that the individual provide reasonable documentation about the disability and his or her functional limitations.
- b. If the Decision-maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, he/she will make a request to the organizational element EEO Officer or his/her designee to obtain such information.

- c. The organizational element EEO Officer or his/her designee will make a determination as to whether medical documentation is necessary. If it is, he/she will request the necessary medical information. If it is not necessary, the request for accommodation will be returned promptly to the Decision-maker to complete the processing. Where organizational element EEO officials make determination regarding the sufficiency of medical information or documentation, those EEO officials shall recuse themselves from processing complaints in which conflicts or perceived conflicts may exist.
- d. If a determination is made to seek medical information, information will be requested sufficient to substantiate that the individual has a Rehabilitation Act disability and needs the reasonable accommodation requested.
Documentation unrelated to the disability claimed will not be requested. Organizational element requests for medical information will follow the requirements set forth in EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (available on EEOC's internet site at www.eeoc.gov).
- e. The organizational element EEO Officer or his/her designee will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. In order to get the most helpful possible information, all requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The organizational element EEO Officer or his/her designee should work with the Decision-maker, Human Resources Office staff, organizational element counsel, and any other individual designated by the organizational element, as appropriate, in seeking suitable information.
- f. Once the medical documentation is received, the organizational element EEO Officer or his/her designee will evaluate the documentation, in consultation with the Decision-maker, Human Resources Office staff, organizational element counsel, a physician chosen by organizational element, and/or any other official designated by the organizational element, if necessary. If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the organizational element to determine whether an accommodation is appropriate, the organizational element may ask for further information. First, however, the organizational element should explain to the individual seeking the accommodation, in specific terms, why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request. The individual may then ask the health care or other appropriate professional to provide the missing information.

- g. Alternatively, the organizational element EEO Officer or his/her designee and the individual requesting the accommodation may agree that the individual will sign a limited release, and that the organizational element may thereafter submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor.
- h. If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the organizational element may request that the individual be examined by a physician chosen by the organizational element. Such an examination would be performed at the organizational element's expense.
- i. The organizational element EEO Officer or his/her designee will let the Decision-maker know whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, if necessary, any additional relevant information about the individual's functional limitations.
- j. In some cases, the individual requesting the accommodation will supply medical information directly to the Decision-maker without being asked. In these cases, the Decision-maker will consider such documentation and if additional information is needed, the Decision-maker will work with the Organizational element EEO Officer or his/her designee as set forth in this section.
- k. If the organizational element determines that medical information submitted must be reviewed by a medical expert, the organizational element will choose the medical expert. The cost of the review will be at the organizational element's expense.
- l. **Failure by the individual to provide appropriate documentation or to cooperate in the organizational element's efforts to obtain such documentation can result in a denial of the reasonable accommodation.**

VII. **Time Frames for Processing Requests and Providing Reasonable Accommodations.** The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. At a minimum, however, requests shall be processed as follows:

a. Requests Not Involving Extenuating Circumstances

- (1) **If the request does not require that supporting medical information be obtained**, the request shall be processed and the accommodation, if granted, provided as soon as possible but not more than **15 business days** from the date the request was initially made, and sooner, if possible. Since the Decision-maker may need the full 15 days to engage in the interactive process and collect all relevant information about possible accommodations, he/she should not delay beginning this process. Failure to meet this time frame solely because a Decision-maker delayed processing the request is not an extenuating circumstance.
- (2) **If the request requires that supporting medical information be obtained** to determine whether the requesting individual has a disability and/or to identify the functional limitations, the following will apply:
- (a) The Decision-maker will make such request to the designated organizational element official as soon as possible after his or her receipt of the request for accommodation, but before the expiration of the 15-day period. The 15-day period will be stayed. The Department recognizes that the need for documentation may not become apparent until after the interactive process has begun.
 - (b) If the designated organizational element official determines that medical information is not needed, the 15-day time period resumes as soon as the designated organizational element official notifies the Decision-maker that he/she can continue processing the request.
 - (c) If the designated organizational element official determines that medical documentation is needed, the decision shall be made and the accommodation, if granted, shall be provided within 15 business days from the date the Decision-maker receives the relevant information from the designated organizational element official.
 - (d) **Examples of accommodations that can easily be provided within the 15-day time frame include:**
 - 1. An employee with diabetes who sits in an open area asks for four breaks a day to test his/her blood sugar levels so that he/she may do these tests in private.
 - 2. An employee, who takes anti-depressants that make it hard for him/her to get up in time to get to the office at 9:00 a.m., requests that he/she be allowed to start work at 10:00 a.m. and still put in an 8-hour day.

3. A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he/she needs more time to prepare.

b. Request Involving Extenuating Circumstances

- (1) When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the Department's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All organizational element officials are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:
 - (a) The purchase of equipment may take longer than 15 business days because of requirements under the Federal Acquisition Regulation and EEOC Order 360.001, Acquisition Policies and Procedures.
 - (b) Equipment must be back-ordered, the vendor typically used by the organizational element for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
 - (c) The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before the organizational element buys the equipment.
 - (d) New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
 - (e) There is an outstanding initial or follow-up request for medical information, or the designated organizational element official is evaluating medical information that has been provided.

Where extenuating circumstances are present, the Decision-maker must notify the individual, in writing, of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes should also be communicated promptly to the individual.

If there is a delay in providing an accommodation that has been approved, the

Decision-maker must decide whether **temporary measures** can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the Decision-maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if:

- (1) they do not unreasonably interfere with the operations of the Department and organizational element; and
- (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.

For example, there may be a delay in receiving adaptive equipment for an employee with vision impairment. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

If a delay is attributable to the need to obtain or evaluate medical documentation and the organizational element has not yet determined that the individual is entitled to an accommodation, the organizational element may also provide an accommodation on a temporary basis. In such a case, the Decision-maker will notify the individual **in writing** that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

Organizational element Decision-makers who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

VIII. **Expedited Processing.** In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the 15 business days discussed above. This includes where a reasonable accommodation is needed:

- a. **To enable an applicant to apply for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the organizational element needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation if needed.
- b. **To enable an employee to attend a meeting scheduled to occur shortly.** For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

Granting Or Denying A Reasonable Accommodation Request

- I. **Granting a Reasonable Accommodation Request.** As soon as the Decision-maker determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual by the Decision-maker. If the accommodation cannot be provided immediately, the Decision-maker must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing.
- II. **Denial of Reasonable Accommodation Request**
 - a. As soon as the Decision-maker determines that a request for reasonable accommodation will be denied, he/she must issue a written decision to the individual who requested the accommodation, with a copy to the organizational element EEO Officer. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial.
 - (1) Where the Decision-maker has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the Decision-maker believes the chosen accommodation will be effective.
 - (2) Reasons for the denial of a request for reasonable accommodation **must include specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship**, and may include the following:
 - (a) The requested accommodation would not be effective.
 - (b) Providing the requested accommodation would result in undue hardship. Before reaching this determination, the Decision-maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided.

A determination of undue hardship means that the organizational element finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the organizational element's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, the organizational element will follow the standards outlined in the regulations and in the "*Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act.*"

- (c) Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
 - (d) The requested accommodation would require the removal of an essential function.
 - (e) The requested accommodation would require the lowering of a performance or production standard.
- (3) The written notice of denial must also inform the individual that he/she has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board and union grievance procedures. The notice must also explain organizational element procedures available for dispute resolution.

Dispute Resolution

- I. If an individual wishes reconsideration, he/she should first ask the Decision-maker to reconsider the decision. The individual may present additional information in support of his/her request. The Decision-maker will respond to the request for reconsideration within **five business days**.
- II. If the Decision-maker does not reverse the decision, the individual may appeal the decision. The appeal shall be decided by the senior official having programmatic responsibility for the organizational element's Disability Program. A response to the appeal will be issued to the individual within **ten business days**.
- III. Pursuing dispute resolution procedures, including seeking reconsideration from the Decision-maker and filing an appeal **does not affect the time limits for initiating statutory and collective bargaining claims**. An individual's participation in any dispute resolution process **does not satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures**.

Confidentiality And Disclosure

- I. All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation **must be kept confidential**. The information shall be kept in files separate from the individual's personnel file. In addition, employees who obtain or receive such information are strictly bound by these confidentiality requirements. The information may be disclosed **only** to the following individuals:
 - a. Supervisors and managers who need to know (including the Decision-maker who requested that the medical information be obtained) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if absolutely necessary.
 - b. First aid and safety personnel, when appropriate, if the disability might require emergency treatment.
 - c. Government officials when the information is necessary to investigate Department or organizational element compliance with the Rehabilitation Act.
 - d. In certain circumstances, to workers' compensation offices or insurance carriers.
- II. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

Information Tracking And Reporting

- I. The Decision-maker will complete the attached information reporting form provided in Appendix D and submit it to the organizational element EEO Office within **10 business days** of the decision. The decision maker should attach to the form copies of all information, including medical information; s/he received as part of processing the request. The organizational element will maintain these records for the longer of the employee's tenure with the organizational element or five years.
- II. The Organizational element EEO Officer will prepare and submit to the Office for Civil Rights and Civil Liberties annually, by October 15th, a report containing the following information:
 - a. the number of reasonable accommodations, by type, that have been requested in the application process and whether those requests have been granted or denied;
 - b. the jobs (occupational series, grade level, and organizational element component) for which reasonable accommodations have been requested;
 - c. the types of reasonable accommodations that have been requested for each of those jobs;
 - d. the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
 - e. the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
 - f. the reasons for denial of requests for reasonable accommodation;
 - g. the amount of time taken to process each request for reasonable accommodation; and
 - h. the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations. (Appendix C provides a listing of some of the sources of technical assistance available.)

In addition, the report shall provide a qualitative assessment of the organizational element's reasonable accommodation program, including any recommendations for improvement of the Department's reasonable accommodation policies and procedures.

- III. Office for Civil Rights and Civil Liberties will prepare an annual report containing the information indicated above, presented in the aggregate. The report format is provided in Appendix D. Reports shall be maintained for at least three years.

Relation of Procedures to Statutory and Collective Bargaining Claims

- I. Executive Order 13164 does not create new rights for applicants or employees; nor does it limit an individual's rights under the Rehabilitation Act. The policies and requirements described in these procedures are in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.
- II. An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must comply with the following:
 - a. **EEO Complaint.** Contact an EEO counselor within 45 days from the date of receipt of the written notice of denial.
 - b. **Collective Bargaining Claim.** File a grievance in accordance with the provisions of the controlling Collective Bargaining Agreement; or
 - c. **MSPB Appeal.** Initiate an appeal within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3.

Responsibilities

- I. **The Office for Civil Rights and Civil Liberties shall:**
 - a. Develop and issue policy and procedures governing the provision of reasonable accommodation;
 - b. Advise Department and organizational element officials regarding laws, regulations, executive orders and Department policy related to the provision of reasonable accommodation;
 - c. Ensure compliance with the governing laws, regulations, executive orders and Department policy related to the provision of reasonable accommodation; and
 - d. Develop systems to track and report on the provision of reasonable accommodation.
- II. **Organizational Element Equal Opportunity Officers shall:**
 - a. Develop and issue procedures for processing requests for and providing reasonable accommodation, consistent with governing laws, regulations, executive orders, EEOC directives, and Department policy;
 - b. Ensure that supervisors and managers, and human resource and EEO officials understand their obligation with respect to the provision of reasonable accommodation;
 - c. Ensure the confidentiality of medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation; and
 - d. Develop systems to track and report on the provision of reasonable accommodation.

Appendices

APPENDIX A: SAMPLE REASONABLE ACCOMMODATION REQUEST FORM

Request For Reasonable Accommodation	
Applicant/Employee Name	Office Location and Address
Occupational Series and Grade (e.g., GS-301-11)	Office Telephone Number
Briefly describe the medical condition requiring accommodation.	
Briefly describe the specific accommodation being requested. (If additional space is needed, attach a separate sheet.)	
Explain how the requested accommodation would assist you in: (1) performing the essential duties of your position, (2) using the job application process, or (3) taking advantage of a benefit or privilege offered by the office/bureau.	

Requester: _____

Date: _____

Appendix B: Sample Confirmation Form

CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION	
Employee/Applicant Data Name: Telephone: Organization:	Date of Request
	Date of Receipt
ACCOMMODATION REQUESTED <i>(Be as specific as possible, e.g., adaptive equipment, reader, interpreter.)</i>	
REASON FOR REQUEST	
Return Form to: <i>(Enter Title/Address of Responsible Official)</i>	
SUBMITTED BY: TELEPHONE:	

Appendix C: Reasonable Accommodation Resources

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TTY)

The EEOC Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. 12101 et seq. (1994), and the regulations, 29 C.F.R. 1630 (2003). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are:

- (1) Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC October 17, 2002.
- (2) The Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9 (2003), and
- (3) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents:

- (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995);
- (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996);
- (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997);
- (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and

- (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory, are also available through the Internet at <http://www.eeoc.gov>.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TTY) <http://janweb.icdi.wvu.edu/>.

A service of the U.S. Department of Labor Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations.

Washington Center for Internships and Academic Seminars

(202) 336-7569 <http://www.twc.edu>

The Center is a nonprofit educational organization that provides full time academic internships and short term academic seminars in Washington, D.C. for students from colleges and universities nationwide.

The Microsoft-AAPD Federal Information Technology (I.T.) Internship Program

1-(800) 840-8844 <http://www.aapd-dc.org>

This paid internship program provides students with disabilities interested in pursuing I.T. careers, with the exclusive opportunity to participate in an eleven (11) week internship at a federal agency in Washington, D.C. The goal of the program is to provide these students who have a demonstrated interest in I.T. careers with the opportunity to participate and benefit from highly sought-after federal internships.

Project Advance

(240)-283-1564

Project Advance is a Department of Labor (DOL) contracted program within DOL's One Stop Recruitment in Montgomery County, Maryland. Project Advance provides placement services to place highly skilled candidates with disabilities who have been displaced, laid-off, or went out of business during these challenging times. Clients are career professionals with backgrounds in finance, accounting, IT, computer science, etc., all of whom are Schedule A eligible and ready to start work immediately. The program's coordinator discusses agency hiring needs and arranges interviews for her clients. Project Advance services are available at no cost to the agency.

Veterans Rehabilitation & Employment (VR&E)

(202) 530-9372 www.vba.va.gov/vr&e.htm

VR&E is an outstanding opportunity to hire a qualified disabled veteran. VR&E's Non-Paid Work Experience Program (NPWE) provides the veteran with a monthly stipend. The agency has the opportunity to evaluate the veteran prior to consideration for hiring the veteran in a temporary or permanent position. There is no cost or obligation to hire the veteran participant. DHS is looking forward to participating in this exciting program.

GSA's Center for IT Accommodation (CITA) www.gsa.gov

CITA is the Government's principal advocate and coordinator for making information technology accessible for people with disabilities. Information on

GSA's Assistive Technology Showcase

(202) 208-7453 Fax: (202) 501-6269

Sponsored by GSA's Center for IT Accommodation (CITA), the AT Showcase displays state-of-the-art assistive technologies and ergonomic solutions. The Showcase supports government managers, supervisors, employees, and the public with a wide range of assistive technology equipment.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TTY)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

The U.S. Access Board

<http://www.access-board.gov/news/evacplanning.htm>

The Board provides its own emergency evacuation plan and a summary document on the procedures. Also included is a resources link to other related sites.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TTY)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TTY)

<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- (1) information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- (2) centers where individuals can try out devices and equipment;
- (3) assistance in obtaining funding for and repairing devices; and
- (4) equipment exchange and recycling programs.

DoD's Computer /Electronic Accommodations Program (CAP)

<http://www.tricare.osd.mil/cap/> provides assessment, electronic assistive devices training and other support services to employees with disabilities quickly, effectively, and at no cost to partnering agencies. CAP assistive technology explores solutions for employees with vision, hearing, dexterity and cognitive/communicative disabilities

For additional information, or to schedule a tour of the Technology Center at the Pentagon, contact CAP at:

- (703) 681-8813 (VOICE)
 - (703) 681-0882 (TTY)
 - (703) 681-9075 (FAX), or
 - email CAP@tma.osd.mil.
- website: <http://www.tricare.osd.mil/cap/>

APPENDIX D: Annual Report on Requests for Reasonable Accommodation

Part 1: Reasonable accommodations requested in the application process

A. Series and Grade	B. Type Accommodation	C. Total Granted	D. Total Denied	E. Reason for Denial	F. Total Requests	G. Processing Time

Part 3: Resources of technical assistance consulted in identifying possible accommodations

List all resources (including organizational element resources) consulted in an effort to identify reasonable accommodations for employees and applicants.

Part 4: Assessment of organizational element's reasonable accommodation program

Provide a brief qualitative assessment on the organizational element's reasonable accommodation program, including any improvements and/or policy and procedural changes needed.

Instructions for Completing Part 1: Reasonable accommodations requested in the application process

Part 1A - Occupational Series and Grade Level. Each occupational series and grade (e.g., GS-301-11) must be identified. If there are two or more positions with the same occupational series and grade level, but different types of accommodations were requested, each occupational series and grade must be identified separately.

Part 1B - Type of Accommodation. Identify the type of accommodation requested for each occupational series and grade level identified in Part 1A. The accommodation must relate to job performance. Examples are as follows:

- Job Restructuring
- Leave
- Modified or Part-Time Work Schedule
- Modified Workplace Policies
- Reassignment

Part 1C - Total Requests Approved. For each separate occupational series, grade level and type listed in Parts 1A and 1B, enter the total number of requests approved.

Part 1D - Total Requests Denied. For each separate occupational series, grade level and type listed in Parts 1A and 1B, enter the total number of requests denied.

Part 1E - Total Requests. This field should equal the sum of Parts 1C and 1D.

Part 1G - Processing Time. Enter the amount of time required to process each requests identified in Parts 1A and 1B. If more than one request is entered in a field, enter the average processing time.

Instructions for Completing Part 2: Reasonable accommodations requested that relate to the benefits or privileges of employment. Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and office outings).

Part 2A - Type of Accommodation. Identify each different type of accommodation requested. The accommodation must relate to a benefit or privilege of employment.

Examples are as follows:

Sign language interpreters

Written materials in alternative formats (e.g., Braille, large print or audio-cassette)

Adaptive equipment

Modified leave procedures

Part 2B - Total Requests Approved. For each type of accommodation listed in Part 2A, enter the total number of requests approved.

Part 2C - Total Requests Denied. For each type of accommodation listed in Part 2A, enter the total number of requests denied.

Part 2D - Total Requests. This field should equal the sum of Part 2B and 2C.

Part 3: Resources of technical assistance consulted in identifying possible accommodations. Self-explanatory

Part 4: Assessment of bureau's reasonable accommodation program.

Self-explanatory